

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE:)	
)	
MICHAEL R. MASTRO)	
)	
Debtor.)	BANKRUPTCY NO. 09-16841 (Ch. 7)
)	
JAMES F. RIGBY, JR. Trustee, solely)	
in his capacity as Chapter 7 trustee of the)	ADVERSARY NO. 09-01439-MLB
bankruptcy estate of Michael R. Mastro,)	
)	
Plaintiff,)	INTERNAL APPEAL NOS. 11-S042,
)	11-S043, 11-S044, 11-S047 AND
v.)	12-S014
)	
)	USDC CONSOLIDATED CASE NO.
MICHAEL R. MASTRO and)	2:11-cv-02077-BJR
LINDA A. MASTRO et al.)	
)	
)	ORDER REGARDING THE LINDA A.
Defendants.)	MASTRO APPEAL
)	

I. INTRODUCTION

Before the Court is Linda A. Mastro's appeal from a final judgment entered against her by the bankruptcy court in an involuntary Chapter 7 adversary proceeding on November 16,

1 2011.¹ Having reviewed the briefing by the parties together with all other relevant materials, the
2 Court now enters the following Order.

3 II. BACKGROUND

4 Appellee James F. Rigby, Jr. (“Trustee”) is the Chapter 7 trustee of the bankruptcy estate
5 of Michael R. Mastro. The Mastro bankruptcy was commenced by the filing of an involuntary
6 petition on July 10, 2009. On September 29, 2009, the Trustee filed an adversary proceeding
7 against Mastro, his wife Linda, and other parties in an effort to recover assets transferred into
8 various trusts before the bankruptcy was filed. Trial of the *Rigby v. Mastro* adversary proceeding
9 took place on various dates between April 19, 2011 and July 1, 2011. Mastro did not appear or
10 testify at trial. On joint motion of the parties, the bankruptcy court entered an order stating:
11 “Michael R. Mastro is deemed to have been called as a witness by the Trustee and to have
12 declined to answer questions and provide other information based on his Fifth Amendment right
13 against self-incrimination with the same effect as if he had appeared at trial and done so in
14 person.”
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16 On June 20, 2011 (while the trial was still in progress), the bankruptcy court ordered the
17 Mastros to turn over two large diamond rings appraised in excess of \$1.4 million. The Mastros
18 refused to do so. On July 12, 2011, the bankruptcy court granted the Trustee’s motion for
19 sanctions against the Mastros. The Mastros were ordered to pay a monetary sanction and were
20 again ordered to turn over the rings. The Mastros again refused to comply. On July 18, 2011, the
21 bankruptcy court entered a second order granting sanctions against the Mastros. The court
22 ordered the Mastros to appear in person on July 27, 2011 and show cause why additional
23 sanctions, including incarceration, should not be imposed for their refusal to comply with the
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¹ *Rigby v. Mastro (In re Mastro)*, 465 B.R. 576 (W.D. Wash. 2011).

1 court's previous orders. The Mastros continued to defy the court. They refused to appear at the
2 scheduled hearing and continued to refuse to turn over the rings. On July 28, 2011, the
3 bankruptcy court entered a third order granting sanctions against the Mastros. Pursuant to that
4 order, it also issued bench warrants for their arrest.

5 On November 16, 2011, the bankruptcy court entered judgment against Linda Mastro.
6 *Rigby v. Mastro (In re Mastro)*, 465 B.R. 576 (W.D. Wash. 2011). During trial, Mrs. Mastro
7 testified that she did not know the location of the two large diamond rings. *Id.* at 589. She
8 testified that she had given them to her husband because she "was sick of those rings" and that
9 her husband would not reveal to her where they were located. *Id.* The bankruptcy court found
10 "Linda to be a witness lacking veracity as her testimony was often transparently vague,
11 contradictory, and self-serving." *Id.* at 586-587. In particular, the court found that at the time of
12 Linda Mastro's testimony, she "still held the rings...knew where the rings were and had joint
13 control" of them with her husband. *Id.* at 589. The court entered judgment against her in the
14 amount of approximately \$1.3 million. It also ruled that all property owned by the Mastros prior
15 to the bankruptcy, including all gold, jewelry and household property, was property of the
16 bankruptcy estate. Mrs. Mastro was ordered to turn over all such property to the Trustee. She
17 filed a notice of appeal of the judgment on November 30, 2011. The Mastros did not appeal the
18 arrest warrants or the bankruptcy court's orders granting sanctions against them.

21 The Mastros fled the jurisdiction on or about July 21, 2011. The U.S. Marshal was unable
22 to locate the couple until October 24, 2012 when they were located and arrested by French
23 authorities near Lake Annecy in the French Alps.² Recovered with them were between 75 and
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² See <http://www.fbi.gov/seattle/press-releases/2012/michael-and-linda-mastro-indicted-for-bankruptcy-fraud-and-money-laundering>.

200 pieces of jewelry estimated to be worth \$3 million.³ Among the pieces were the two large diamond rings. The Mastros remained in jail for seven weeks before they were placed under house arrest.⁴ Criminal indictments have issued charging them with 43 counts of bankruptcy fraud and money laundering in the United States.⁵ The couple has hired a French lawyer and is fighting extradition.^{6, 7}

III. ISSUES ON APPEAL

Appellant presents the following issues on appeal: (1) whether the bankruptcy court erred in declaring that all property of Michael R. Mastro or Linda A. Mastro on the date of the bankruptcy was community property, and that Appellant does not hold any property in a separate capacity; (2) whether the bankruptcy court erred in directing Appellant to turn over gold bars purchased for \$99,300; (3) whether the bankruptcy court erred in directing Appellant to turn over seven items of jewelry (including the two large diamond rings); (4) whether the bankruptcy court erred in awarding judgment against Appellant in the amount of \$995,106 for all amounts deposited into and disbursed out of the LCY LLC account before and after the bankruptcy filing; and (5) whether the bankruptcy court erred in awarding judgment against Appellant in the amount of \$300,000 for the “sale and buy-back” of a Rolls Royce.

The Trustee raises the following challenges to her appeal: (1) Appellant is barred from pursuing the appeal due to the fugitive disentitlement doctrine; (2) the appeal fails to satisfy the

³ See http://seattletimes.com/html/business/technology/2020288086_mastrojewelryxml.html

⁴ See <http://www.bizjournals.com/seattle/blog/2013/02/mastros-house-arrest-eased-fight.html>

⁵ See <http://www.fbi.gov/seattle/press-releases/2012/michael-and-linda-mastro-indicted-for-bankruptcy-fraud-and-money-laundering>

⁶ See http://seattletimes.com/html/business/technology/2019525149_mastro26.html

⁷ This Court may take judicial notice of the material contained within these media articles. Fed. R. Evid. 201(b)(1); see also, *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994); *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (taking judicial notice of newspaper article describing widespread layoffs at Hughes where the fact of the layoffs was generally known in Southern California).

1 applicable standard of review; and (3) the judgment against Appellant is appropriate under the
2 relevant laws.

3 IV. DISCUSSION

4 A. Jurisdiction and Standard of Review

5 This Court has jurisdiction to decide this appeal under 28 U.S.C. § 158(a)(1). The Court
6 reviews the bankruptcy court's conclusions of law and interpretation of the Bankruptcy Code *de*
7 *novo*, and its factual findings for clear error. *Greene v. Savage (In re Greene)*, 583 F.3d 614, 618
8 (9th Cir. 2009).

9 B. The Fugitive Disentitlement Doctrine

10 The Trustee moves to dismiss this appeal based on the fugitive disentitlement doctrine.
11 The Trustee asserts that by fleeing the jurisdiction of the United States, Linda Mastro has waived
12 her right to pursue this appeal. (Dkt. No. 18 at 7.). This Court agrees.

13 The doctrine of fugitive disentitlement provides that unless a party is willing to submit
14 her case for complete adjudication, win or lose, she is disentitled "to call upon the resources of
15 the court for determination of [her] claims." *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970).
16 "Escape from federal custody is inconsistent with the pursuit of judicial remedies and constitutes
17 a voluntary waiver of any pending judicial review." *Hussein v. INS*, 817 F.2d 63, 63 (9th Cir.
18 1986) (internal quotation marks and alterations omitted). The doctrine developed at common
19 law, initially as a means of barring fugitives from bringing appeals in their criminal cases. *See*
20 *Ortega-Rodriguez v. United States*, 507 U.S. 234, 244-245 (1993). The logic went that a fugitive
21 should not be able to avail herself of the courts to secure the benefit of a favorable appellate
22 outcome when she has removed herself from a court's power to enforce an adverse outcome, for
23 "[i]t is clearly within our discretion to refuse to hear a criminal case in error, unless the convicted
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1 party ... is where [she] can be made to respond to any judgment we may render.” *Smith v. United*
 2 *States*, 94 U.S. 97 (1876). In addition to enforceability concerns, the doctrine also rests on the
 3 ground that a fugitive should not be able to exploit judicial processes to her advantage in one
 4 matter while scoffing at them in another. *U.S. v. \$6,976,934.65 Plus Interest*, 478 F. Supp. 2d 30,
 5 35 (D.D.C. 2007) (Lamberth, J.).

6 The doctrine has since been expanded to bar fugitives from seeking relief as plaintiffs in
 7 civil suits, concluding that the rule of fugitive disentitlement in criminal cases “should apply
 8 with greater force in civil cases where an individual’s liberty is not at stake.” *Conforte v.*
 9 *Commissioner of Internal Revenue*, 692 F.2d 587, 590 (9th Cir. 1982) (disallowing fugitive from
 10 appealing tax court ruling); *see also Broadway v. City of Montgomery*, 530 F.2d 657, 659 (5th
 11 Cir. 1976) (court refused to hear appeal from fugitive seeking damages and injunctive relief from
 12 alleged illegal wire tap); *Doyle v. Department of Justice*, 494 F. Supp. 842, 845-846 (D.D.C.
 13 1980), *aff’d*, 668 F.2d 1365 (D.C. Cir. 1981) (disallowing FOIA case brought by fugitive);
 14 *United States v. U.S. Commanding Officer of Office of Provost Marshal*, 496 F.2d 324, 326 (1st
 15 Cir. 1974) (court refused to hear habeas petition seeking relief from a specific Army regulation
 16 where petitioner was at large); *Brin v. Marsh*, 596 F. Supp. 1007, 1009-1010 (D.D.C. 1984)
 17 (Richey, J.) (court-martialed soldier who went AWOL and remained at large not allowed to call
 18 on court’s resources to hear his claim for discharge and restoration of retirement benefits).

19 The doctrine does not automatically disqualify a fugitive from maintaining a civil action
 20 in federal court. *See Degen v. United States*, 517 U.S. 820 (1996). Instead, in the appellate
 21 context, the appellant must be a fugitive and her fugitive status must have a connection, or nexus,
 22 to the appellate process she seeks to utilize. *Wenqin Sun v. Mukasey*, 555 F.3d 802, 804-805 (9th
 23 Cir. 2009); *United States v. Barnette*, 129 F.3d 1179, 1183 (11th Cir. 1997). Whether an
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1 appellant is a fugitive is, in turn, a question of fact involving two elements: (1) absence from the
2 jurisdiction, and (2) intent to avoid arrest or prosecution. *In re Buckingham*, 2012 WL 6044832,
3 *5 (N. Mariana Islands Dec. 5, 2012).

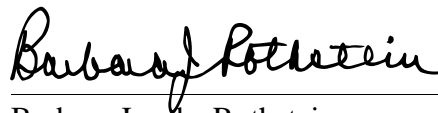
4 The Court finds that Linda Mastro is a fugitive. She fled the United States seeking refuge
5 from prosecution in France. And, now that she has been arrested, she is fighting extradition. *See*,
6 *e.g.*, *Maydak v. United States Dep't of Educ.*, 150 Fed. Appx. 136, 137 (3d. Cir. 2005) (affirming
7 the district court's dismissal of plaintiff's FOIA claim after it determined that plaintiff remained
8 a fugitive even after he was arrested and his attempt to avoid extradition failed). In addition, the
9 Court finds that Mrs. Mastro's fugitive status is connected to this appeal. The original bench
10 warrants issued by the bankruptcy court and the current criminal indictments stem from the
11 Mastros' attempt to escape the bankruptcy judgments. Indeed, the very diamond rings that the
12 bankruptcy court ordered the Mastros to turn over (and as to which Linda Mastro denied
13 knowledge of their location) were found in her possession after she was arrested in France. Such
14 blatant disregard for the authority of the judicial system renders her ineligible to pursue an
15 appeal from the orders she is flouting. Linda Mastro's sparse argument against the application of
16 the doctrine—that it is not applicable because she is not a criminal felon—is not only wrong on
17 the law, but wholly unpersuasive. Accordingly, the Court exercises its discretion to abstain from
18 exercising jurisdiction over this matter. *United States v. One Parcel of Real Estate at 7707 S.W.*
19 *74th Lane*, 868 F.2d 1214, 1217 (11th Cir. 1989) (noting that a case in which the fugitive
20 doctrine applies is “essentially an uncontested action”).
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24 V. CONCLUSION

25 For the foregoing reasons, the Court HEREBY DISMISSES with prejudice this appeal

1 from the final judgment against Linda A. Mastro entered by the bankruptcy court on November
2 16, 2011.

3 Dated this 16th day of February, 2013.

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6 Barbara Jacobs Rothstein
7 U.S. District Court Judge
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